



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 9, 1998

Ms. E. Cary Grace  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR98-0401

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112736.

The City of Houston (the "city") received a request for various information. You state that the city will disclose the requested information to the requestor, with the exception of Public Integrity Review Group Report No. 97-P-0008. You assert that this report is exempted from required public disclosure based on sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code exempts from disclosure information made confidential by law, including information made confidential by statute. Portions of the information appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and

411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any criminal history record information generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed.

Section 552.130 of the Government Code provides as follows

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

The submitted information includes photographs of drivers' licenses and drivers' license numbers. The city must withhold this information from disclosure based on section 552.130.

Section 552.108 of the Government Code reads in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

The report at issue concerns an investigation that resulted in the conviction of Mr. Paul Gilmore for the misdemeanor of gift to a public servant. However, you assert that the release of the report will interfere with the investigation and possible prosecution of one of the contractors implicated in the investigation. You have submitted to this office a letter from Officer Melvin Peaco of the Houston Police Department Public Integrity Review Group. Officer Peaco states that the investigation is active and that the Harris County District Attorney's Office is considering filing criminal charges against one of the contractors.

We agree that the release of information pertaining to the contractor the district attorney is still considering prosecuting would interfere with the investigation and prosecution of that contractor. However, not all of the report concerns that contractor. Thus, we conclude that the city may withhold from the requestor based on section 552.108(a)(1) the portions of the report that relate to the active investigation.

You suggest that section 552.108(a)(2) excepts from public disclosure all information in the report that identifies "other individuals for whom there is neither a conviction nor deferred adjudication." Section 552.108(a)(2) of the Government Code reads as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:


...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

While section 552.108(a)(2) may except from disclosure criminal investigative information when the investigation did not result in conviction or deferred adjudication, the exception does not apply to "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, section 552.108 does not protect from disclosure the identities of the individuals for whom the investigation did not result in a conviction or deferred adjudication. Thus, the city must release to the requestor the information that does not concern the contractor under investigation.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 112736

Enclosures: Submitted documents

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